



City of Rockville
Mayor and Council
Agenda Item

For the meeting on:	January 11, 2010
Agenda Item Type:	Discussion & Instructions
Department:	City Manager
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Subject

Discussion and Instruction on an Ordinance to amend Section 1-8 of the Rockville City Code entitled "Application of County Law" so as to allow Chapter 10B entitled "Common Ownership Communities" of the Montgomery County Code to apply in the City.

Recommendation

Staff recommends that the Mayor and Council discuss the background information and public input provided and direct staff on whether to bring back the Ordinance for adoption on January 25, 2010.

Change in Law or Policy

The ordinance amends the City Code to allow property owners and boards of homeowner associations (HOAs) and condominium associations located within the City of Rockville to use the services of the Montgomery County Commission on Common Ownership Communities (CCOC). The ordinance, introduced on October 12, 2009, is found in Attachment D.

Discussion

Montgomery County defines a common ownership community as a development, residential condominium, or cooperative housing project that is subject to a declaration enforced by a homeowners' association. The Commission on Common Ownership Communities (CCOC) was established by County Code Chapter 10B in 1991 to provide oversight of common ownership community activities. County Code Chapter 10B is found at Attachment A.

The commission is organizationally located in the County's Office of Consumer Protection. The FY10 adopted operating budget for the CCOC totals \$382,220 and includes 2.5 workyears. The majority of the budget funds personnel which includes one full time commission staff person and portions of additional positions that devote some of their time to the commission. The budget also supports commission operations including public outreach, education and dispute resolution procedures.

Commission Membership

The County Executive appoints members to the commission, subject to confirmation by the County Council. The fifteen members consist of:

- Six residents of self-managed and professionally managed common ownership communities,
- Six members from the ranks of professionals associated with common ownership communities (attorneys, property managers, investor-owners), and
- Three members from the category of real estate sales and developers.

The County Council is considering a bill that would adjust the composition of the commission to increase from six to eight the number of residents of associations; increase from six to seven the number of professionals associated with common ownership communities; and merge the real estate sales and development category with the professional category.

Designees of the County Council, Planning Board, Department of Environmental Protection, Department of Permitting Services, Department of Transportation, and the Department of Housing and Community Affairs are ex-officio, nonvoting members of the commission.

Commission Mission and Responsibilities

According to County Code Chapter 10B, the CCOC was established to promote an equitable balance between the powers of community governing bodies, owners and residents. To that end, the CCOC's mission is to provide owners, tenants, residents, boards of directors, and management companies of self-governing residential communities with information, assistance, and impartial dispute resolution programs that:

- Improve the quality of life in the community,
- Strengthen the self-governing community structure, and
- Enhance the value of residential property in community associations.

Responsibilities of the commission and CCOC staff include:

- Ensuring proper establishment and operation of homeowners' associations, condominium associations, and cooperative housing corporations;
- Promoting awareness and understanding of the rights and obligations of living in a common ownership community;
- Reducing the number and divisiveness of disputes, encouraging informal resolution of disputes, and holding formal hearings as needed;
- Maintaining property values and quality of life in these communities;
- Assisting and overseeing the development of coordinated community and government policies, programs, and services which support these communities; and
- Preventing potential public financial liability for repair and replacement of common ownership community facilities.

Common Ownership Community Registration

Chapter 10B of the Montgomery County Code requires that the leadership of each common ownership community, *excluding those located within the limits of incorporated municipalities*, register annually with the Office of Common Ownership Communities. The Licensing and Registration Unit of the Department of Housing and Community Affairs manages the registration process. Registration involves completing a registration form, submitting a complete and current copy of the association's recorded governing documents, and paying an annual registration fee based upon the number of units located in the common ownership community. In FY 2009, the registration fee was \$2.25 per housing unit. In FY 2010, the fee increased to \$3.00 per unit. Commission staff does not expect the fee to increase in FY11.

Table 1 presents registration data from the Commission on Common Ownership Communities. Once a community is registered, the Licensing and Registration Unit automatically generates a renewal notice each year. Any common ownership community that fails to register with the County is subject to a class A violation and may have to pay civil fines as a penalty.

Table 1. Montgomery County CCOC Registrations

Registrations	2005	2006	2007	2008	2009
Number of registered communities	833	852	905	954	968
Number of units	116,532	118,248	121,101	122,082	123,083

The bill currently before the County Council would add a requirement that the governing body of a community association must at least annually distribute information to notify all owners about the availability of the CCOC services. That information could be included in any annual notice or other mailing to all association members.

Advisory and Education Services

The CCOC advises the County Council, County Executive and County Government offices on matters related to common ownership communities. For example, the commission provides opinions on bills pending in the State legislature, on fees that could impact common ownership communities, and on the impact of the foreclosure crisis on the communities.

The commission staff provides technical assistance, information and advice to association boards and residents on topics associated with leading and residing in a common ownership community, including conducting elections, adopting budgets, and appropriately enforcing association bylaws. Staff works with parties on informal resolution of disputes and provides information about how to submit a formal complaint.

To educate common ownership board members and residents, the CCOC provides the following on-line resources:

- FAQs on architectural control, assessments, condominium elections, meetings, records & documents.
- A Bill of Rights and Responsibilities for owners in common ownership communities outlining 12 principles found in state law.
- A Common Ownership Community Manual and Resource Guide.

Funds from the increase in the registration fee for FY10 will fund a contract for additional education services for common ownership residents and boards of directors.

The CCOC also hosts an annual meeting for all residents and board members for training, networking and information sharing. Upon request, commissioners also speak at association.

Dispute Resolution Services

The CCOC dispute resolution services apply to disputes between association residents and governing bodies such as an HOA board of directors. The CCOC does not resolve disputes between neighbors or disputes with property managers (unless the complaint alleges that the governing body is responsible for the actions of the property manager).

County staff reported that between 50% and 60% of the complaints are filed by associations and most of those are related to violations of architectural controls or parking requirements. The other 40% to 50% of complaints are filed by property owners and involve a variety of topics related to association management and conduct.

County Code Chapter 10B indicates that the County Executive may establish reasonable fees in amounts sufficient to fund the provision of dispute resolution and technical assistance. At this time the CCOC charges a \$50 mandatory filing fee for each complaint filed with the CCOC.

The commission manages disputes that involve the authority of a governing body under the laws and

documents of the association (documents of an association include master deeds, declarations, incorporation documents, bylaws and rules). Disputes under the commission's jurisdiction include any disagreement involving the authority of a governing body to:

- require any person to take any action, or not to take any action, involving a unit;
- require any person to pay a fee, fine or assessment;
- spend association funds; or
- alter or add to a common area or element.

In addition, the commission has the authority to manage a dispute that involves the failure of a governing body, when required by law or an association document, to:

- properly conduct an election;
- give adequate notice of a meeting or other action;
- properly conduct a meeting;
- properly adopt a budget or rule;
- maintain or audit books and records; or
- allow inspection of books and records.

The bill currently under consideration by the County Council would add two items to this list:

- maintain or repair a common element if the failure results in personal injury or property damage; and
- require any person who is subject to association documents to comply with those documents.

The CCOC's jurisdiction does not include disagreements that involve:

- the title to any unit or any common area or element;
- the percentage interest or vote allocable to a unit;
- the interpretation or enforcement of any warranty;
- the collection of an assessment validly levied against a party; or
- the judgment or discretion of a governing body in taking or deciding not to take any legally authorized action.

Dispute Resolution Process and Timeline

The CCOC resolves disputes through informal communication and coordination with CCOC staff, mediation, or a hearing before a panel of commissioners. The workload varies from year to year. Table 2 provides data on workload since 2005, including the number of inquiries, cases filed, mediations and hearings held.

According to staff, the time to complete the dispute resolution process typically ranges from 3 to 12 months. The length of time varies depending on the complaint and the pace of activity by the parties in the dispute. For example, staff report that the parties in a hearing frequently request more time to prepare for the hearing than the CCOC needs to schedule the hearing.

Table 2. CCOC Dispute Resolution Activity

Dispute Activity	2005	2006	2007	2008	2009 through 12/23/09
Inquiries/ Advice Given	1163	1133	945	883	845
Cases Filed	100	88	81	85	72
Mediations	33	34	29	37	21
Hearings	17	21	23	17	13
Cases Closed*	93	94	69	84	78

* More cases may be closed than filed in any given year because cases filed one year may be closed in the following year. As of December 23, 2009, 72 cases were filed, 84 were closed and 66 were pending.

Inquiries and Advice CCOC staff regularly responds to requests for information about common ownership communities and about disputes between property owners and boards of directors. During 2009, CCOC staff responded to 845 requests for information and advice.

The commission requests that any party interested in filing a formal dispute with the CCOC first exhaust all dispute resolution procedures or remedies in the association's governing documents. The commission also addresses a dispute if 60 days have elapsed since a party followed their association's written dispute resolution procedures, and the association has failed to resolve the dispute. The first provision keeps dispute resolution at the community governance level, unless the association processes do not lead to a resolution. The second provision ensures that associations resolve disputes brought to the board in a timely manner.

Complaint Filed The dispute resolution process formally begins when an individual or board of directors files a case or complaint with the CCOC staff. The commission staff reviews all complaints submitted and immediately forwards any that are clearly outside the CCOC's jurisdiction (e.g., a complaint from a Rockville HOA). That first step and subsequent steps are outlined in Table 3 with information about the timeline to complete each step. A significant proportion, approximately 40%, of disputes brought to the CCOC are resolved at this initial step. The CCOC staff work with parties to understand and resolve the problem before even participating in a mediation.

Mediation Within one to five days of filing, CCOC staff send the complaint to the other party in the dispute. The other party has 30 days to reply. Upon hearing from the other party, the CCOC staff works with the parties to arrange a mediation with the Conflict Resolution Center of Montgomery County. Two qualified mediators from the Conflict Resolution Center meet with the parties and attempt to come to an agreement to resolve the dispute. After an agreement developed through mediation is carried out, the case is closed. The CCOC does not stay involved after closing a case or enforce a mediation agreement. If any issues arise between the parties, they can take the matter to court. Approximately 20% of all cases filed with the CCOC are resolved through mediation.

Commission Consideration of Jurisdiction If a party does not respond to the CCOC's letter, either party refuses to attend mediation, or mediation fails to resolve the dispute, the resolution process continues. The commission reviews the complaint at the next monthly meeting and determines whether it falls under their jurisdiction as defined in County Code Chapter 10B. The County Attorney provides advice. If the CCOC rejects jurisdiction, the case is closed and the parties have the option of going to court or file a new CCOC complaint.

Hearing If the commission accepts jurisdiction, a hearing date is set. Staff sends a "Summons and Notice of Hearing" to both parties. The parties have 15 days to send each other document requests and questions to be answered in writing, under oath. On the scheduled date, the commission convenes a 3-member panel to hear the dispute. The commission may compel the attendance at a hearing of witnesses and parties, administer oaths, take testimony under oath or require the production of evidence. The commission may also issue summonses for witnesses, documents, or other evidence. The County Attorney may enforce the summons in a court with jurisdiction. At any hearing, a party or a witness may be advised by counsel.

The hearing panel must apply state and county laws and all relevant case law to the facts of the dispute, and may order the payment of damages and any other relief that the law and the facts warrant. If any party does not appear at the scheduled hearing, the hearing panel may order any relief to another party that the facts on record warrant.

Decision and Order After the hearing, the panel has 45 days to issue a Decision and Order. Two

examples of hearing panel decisions are at Attachment B to provide a better understanding of the type of cases brought before and panel, information considered and decisions made.

The losing party usually has 30 days to obey the order or appeal the order to the Circuit Court. The decision of the hearing panel is binding on the parties, subject to judicial review. The commission, acting through the Office of Consumer Protection and the County Attorney, may enforce a decision of the hearing panel by taking any appropriate legal action. Any person who does not comply with a final commission order issued under this Chapter has committed a class A civil violation. CCOC staff reports that they issue citations for not complying with a hearing panel order a couple of times each year. Staff prepares the charge and the County Attorney's Office files the charge in the District Court.

Table 3. CCOC Dispute Resolution Process

Staff receives a complaint		
Staff notifies the other party – 1 to 5 days		
Other party responds to the notification – up to 30 days		
If parties agree to mediation:	If no response from other party, mediation is declined, or mediation is unsuccessful:	
Staff arranges a mediation session conducted by CRCMC – 3 to 8 weeks	CCOC considers jurisdiction over the complaint at their next monthly meeting – up to 30 days	
Dispute resolved and case is closed	Jurisdiction not accepted and case is closed	Jurisdiction is accepted and hearing date is set – at least 30 days
		Hearing panel issues a Decision and Order and case is closed – up to 45 days

Dispute Resolution Results

Table 4 outlines the results of the dispute resolution process in calendar year 2009. The data shows that the majority of the disputes are resolved very early in the process. Upon receiving a formal written complaint, CCOC staff gathers information and discusses the complaint with the parties. Of the 84 cases resolved in 2009, 34 or 40%, were resolved through this informal coordination and assistance with CCOC staff.

Formal mediation through the Conflict Resolution Center of Montgomery County (CRCMC) also successfully resolves complaints. Of the 84 complaints resolved, 20% were resolved through mediation. Four additional complaints failed to come to resolution during mediation but were resolved prior to a hearing with the commission.

Of the 84 complaints resolved, 28 moved forward to the commission for consideration of jurisdiction. The commission closed 9 or 11% because they did not meet the jurisdictional requirements in the Code. Nineteen cases, or 23%, went to a hearing before a panel of commissioners.

Table 4. Dispute Resolution Process Results (as of December 23, 2009)

Resolution	Number of Cases	Percent of Cases
Resolved prior to mediation	34	40%
Resolved through mediation	17	20%

Resolved prior to a hearing	4	5%
Resolved at a hearing	19	23%
Case withdrawn	1	1%
CCOC determined no jurisdiction	9	11%
Total	84*	100%

* More cases may be closed than filed in any given year because cases filed one year may be closed in the following year. As of December 23, 2009, 72 cases were filed, 84 were closed and 66 were pending.

Rockville's Common Ownership Communities

There are currently 57 common ownership communities in the City of Rockville. They represent 7,886 housing units, including single family homes, townhomes and condominiums. A list of the common ownership communities and the number and type of housing units in each is provided in Attachment C. The list also shows the annual registration fee, at the current \$3.00/unit rate, which would be due from each association if Rockville participated in the CCOC.

Currently, residents and board members of any of these communities may contact the City when faced with a dispute that they are not able to resolve. Most of the requests for assistance come to the City Manager's Office as a Citizen Service Request (CSR) or to the Community Mediation Program.

Between calendar year 2004 and 2008, the City received eleven requests from residents for help resolving a dispute between the resident and the association board of directors. Disputes involved topics like the approach that an association took in collecting payment for property maintenance violations, association rules for use of the community swimming pool, and allegations of inconsistent application of HOA covenants. One dispute was resolved through a formal mediation. Five other disputes were resolved informally through communication and assistance from the Mediation Administrator.

During calendar year 2009, eight association residents contacted the City for assistance resolving a dispute. The eight complainants live in seven different common ownership communities. The topics in dispute included tree removal, fees, architectural controls, unit repairs, and parking. Staff invited all complainants to participate in mediation, with the following results:

- Mediation was held and successfully resolved the dispute – 2 instances
- Conflict was resolved through assistance from the Mediation Administrator, without holding a formal mediation – 1 instance
- Complainant declined mediation due to fear of retaliation by the association – 1 instance
- HOA declined the invitation to mediate – 1 instance
- Complainant continues to work with the association on a resolution after consulting with the mediation Administrator – 2 instance
- Complainant is considering mediation – 1 instance

Rockville's Participation in the Commission

In order for Rockville communities to participate in the CCOC, the Mayor and Council would need to adopt an ordinance to amend Section 1-8 of the Rockville City Code entitled "Application of County Law" so as to allow Chapter 10B entitled "Common Ownership Communities" of the Montgomery County Code to apply in the City. An ordinance to amend the City Code was introduced by the Mayor and Council on October 12, 2009 and is found in Attachment D.

The City Council considered participating in the CCOC when it was established in 1991. A considerable number of common ownership communities reported to the Mayor and Council that they did not support

participation, primarily because of the cost. Some boards of directors reported that the communities have a cap on the increase in association dues charged to property owners annually. For some communities, passing along the commission registration fee to property owners would result in the Boards exceeding the allowable percentage increase. The Mayor and Council decided not to participate in the County's program.

In response to the then Mayor and Council's request, a group of common ownership community representatives developed the Rockville Common Ownership Communities Association (RCOCA) in 1991 to provide dispute resolution services in Rockville. A city staff member from the Department of Community Development was assigned to serve as liaison to ROCOA and as the point of contact for persons and organizations seeking assistance.

RCOCA operated for five years. During its initial two years, the organization received applications to mediate 5-6 cases per year. The ROCOA board obtained the services of volunteer trained mediators to resolve the disputes. Virtually all of the cases concerned enforcement of architectural requirements by community associations, with a significant number of the inquiries related to the prohibition or regulation of satellite dish installations. Participation was voluntary and the results of mediations were not enforced.

Community associations also occasionally contacted ROCOA for assistance such as information about contractors or instructions for filing for County financial assistance for providing roadways. Those types of inquiries were answered by experienced Board members or by reaching out to the Community Association Institute, a national professional organization specializing in common ownership community concerns.

The requests for service diminished greatly after the first two years. With the creation of the City's Mediation Program, a separate source of mediation through ROCOA was no longer necessary and the organization disbanded. The Mediation Program began providing formal mediation services as well as advice, support and information for parties in a conflict.

Implementation

If the Mayor and Council adopts the Ordinance, the CCOC will send a letter to each common ownership community board of directors welcoming them and informing the leadership that they need to register with the County within 30 days and pay the annual fee. Fees would be prorated to represent the point in the year that Rockville associations register with the County. As soon as the association is registered, the board and property owners can use the commission's services.

The commission will ask the boards of directors and management companies to forward information about the CCOC's services to all property owners in the association. The commission is also considering holding an information session specifically for Rockville associations and residents to introduce the services available.

Benefits of participating in the CCOC

1) The commission promotes an equitable 'balance of power'

Montgomery County Code Chapter 10B states that "The Council finds that there is often unequal bargaining power between governing bodies, owners, and residents of homeowners' associations, residential condominiums, and cooperative housing projects. Owners and residents in these common ownership communities are in effect citizens of quasi-governments, which provide services in lieu of government services, levy assessments, and otherwise have a significant impact on the lives and property of owners and residents."

The Commission on Common Ownership Communities was created to promote an equitable balance between the powers of governing bodies, owners and residents through regulation, education, and

dispute resolution services. If the Mayor and Council adopted County Code Chapter 10B, Rockville's 57 common ownership communities and their residents would have access to dispute resolution services, information and support from experts in the field of common ownership communities.

2) The Commission's dispute resolution process provides an alternative to going to court

If a party in a conflict is not open to mediation or mediation is not successful in resolving a conflict, Rockville associations' and property owners' only other option is to go to court. The cost to take a dispute to court prohibits some from every resolving a dispute. The commission provides another step beyond mediation in the form of a hearing before a commission panel. It provides another opportunity to resolve the dispute without the costly and time-consuming process of going to court.

3) The number of common ownership communities in Rockville has increased since 1991

As the number of homeowner and condominium associations in Rockville increases, the number of individuals and boards of directors eligible to use the CCOC's services and the potential need for the CCOC services increases. Overall the number of common ownership communities in the City increased from 31 in 1991 to 57 in 2009, an increase of 84%. The total number of units increased from 3,889 to 7,886, an increase of 103%. Additional data is presented in Table 4.

The biggest increase is in the category of condominiums and communities with a combination of condominiums and townhouses. Fifteen new communities have been added since 1991 - 10 in King Farm, 3 in Falls Grove, and 2 in Town Center. This represents an increase of 188% over the 8 communities that existed in 1991. The number of condominium units has increased by 1300, from 1216 to 2516 units, an increase of 107%.

The other category of housing units that increased significantly since 1991 is neighborhoods with a combination of townhouses and single family units. That increase reflects the new developments like King Farm, Falls Grove, Rose Hill Falls and Legacy at Lincoln Park. The number of units in townhome/single family communities increased by 2,145 or 165%.

The 2005 Census Update reported 21,895 households in the City. Based on that figure and the 7,886 common ownership units currently in Rockville, common ownership units represent approximately 36% of Rockville's households.

Table 4. Rockville Common Ownership Communities and Units – 1991 to 2009

	# of Communities 1991	# of Communities 2009	% Inc.	Number of Units 1991	Number of Units 2009	% Inc.
Condo & Condo/T H	8	23	188%	1216	2516	107%
TH	14	17	21%	759	986	30%
TH & SF	4	9	125%	1300	3445	165%
SF	5	8	60%	614	939	53%
Total	31	57	84%	3889	7886	103%

TH = Townhome

SF = Single Family

4) The commission's hearing process requires parties to resolve disputes and the hearing panel decision is enforceable

Rockville's Community Mediation Program is voluntary. If either party in the dispute chooses not to participate, a mediation session is not held and the case is closed. In contrast, if a party refuses to attend a mediation session organized by the CCOC or the mediation does not resolve the dispute, it goes to the commission. If any party does not appear at a scheduled commission hearing, the hearing panel may order any relief to another party that the facts on record warrant.

City staff checks in informally with mediation participants one month after the mediation session, but does not enforce agreements reached in mediation. If any conflicts continue, the parties are welcome to meet with the mediators again. The decision of a CCOC hearing panel is binding on the parties, subject to judicial review. The commission, acting through the Office of Consumer Protection and the County Attorney, may enforce a decision of the hearing panel by taking any appropriate legal action. Any person who does not comply with a final commission order issued under Chapter 10B has committed a class A civil violation.

Disadvantages of Participating in the CCOC

1) The commission's annual fee is mandatory

If the Mayor and Council choose to participate in the program, every common ownership community in the City of Rockville will be required to register with the County's Office on Common Ownership Communities and to pay a registration fee. The County designed the program and wrote the legislation to require all communities to participate, so all Rockville's HOAs would need to pay the fee annually. Given the 7,886 units in Rockville, the total amount that the County would collect from common ownership communities in Rockville under the current \$3.00 per unit fee equals \$23,658. Fees per community would vary significantly due to the range of sizes of common ownership communities in Rockville. The fee that would be charged to each community is listed in Attachment C.

The County has increased the annual registration fee in previous fiscal years. When the CCOC was established in 1991, the fee was \$1.50/unit/year. It was subsequently increased to \$2.25/unit/year and to \$3.00/unit/year in FY 2010. No increase is anticipated in FY11, but the fee could increase again in the future to keep pace with the cost of operating the commission.

2) The demand for the commission's dispute resolution service may be low and the majority of the disputes may be resolved through mediation

It is difficult to predict how many disputes will be brought to the commission by Rockville associations and property owners. In addition, CCOC staff reports that approximately 60% of the cases filed with the CCOC are resolved through informal or formal mediation and do not go to the commission for a hearing. If that trend applies to Rockville disputes, it is possible that the majority of any cases brought by Rockville residents and associations could be handled through the City's existing Mediation Program.

During 2009, City staff received eight requests for assistance with a dispute. The City's Mediation Program successfully resolved three of them and three disputes are not yet resolved. The remaining two requests appear most appropriate for the services of the CCOC because one association declined mediation and one resident declined mediation due to fear of retaliation by the association. That represents low demand for the CCOC's dispute resolution services in relation to the total number of common ownership communities in Rockville.

Public Input

Staff solicited public input on the option of Rockville participating in the CCOC through a survey of common ownership community leaders, a survey of common ownership community residents, and a public hearing. The results of the two surveys were presented and reviewed at the Mayor and Council meetings of July 13, October 12 and November 23, 2009. Of the 25 board members and property

managers who responded to the survey, 56% supported the Mayor and Council adopting legislation that provides access to CCOC services. Of the 99 residents who responded, 55% supported adopting legislation.

The Mayor and Council held a public hearing on November 23 and kept the record open until December 23. Ten individuals spoke at the hearing and 31 comments were submitted to the City by e-mail/mail. A summary of the input is in Attachment E. It shows the name, whether the individual supports or opposes, and an summary of the comments submitted.

Of all the spoken and written input, 16 or 52% of individuals/associations support and 15 or 48% oppose an ordinance to amend City Code to allow County Code Chapter 10B to apply in the city. Individuals who weighed in both at the public hearing and in writing are counted once.

Responses to Questions

Responses to questions raised by the Mayor and Council and the public are listed below.

1) Does the CCOC address disputes about association fees?

Under County Code Chapter 10B, the CCOC can address disputes involving the authority of a governing body to require any person to pay a fee, fine or assessment. In other words, an HOA resident could file a complaint indicating that an association charged a fee that the association is not authorized to charge. The CCOC does not have jurisdiction to address a dispute about the collection of an assessment validly levied. In other words, the CCOC would not get involved if a resident failed to pay a fee that was appropriately charged, such as the monthly association dues. CCOC does not serve a collection agency role.

2) Is a common ownership community board of directors required to have an attorney at a CCOC hearing?

No party in a CCOC hearing is required to have an attorney. It was a requirement for association boards of directors prior to 2006. State law was amended to remove that requirement.

3) What proportion of cases brought to the CCOC are from condominium associations, townhome associations and single-family associations?

The CCOC does not track that data.

4) What criteria does the CCOC use in deciding whether to hear a case?

The commission assesses whether a) the facts alleged by the complainant provide reasonable grounds to conclude that a violation of applicable law or association documents occurred and b) the complaint falls under the CCOC's jurisdiction as defined in County Code Chapter 10B.

5) How are CCOC decisions enforced?

The commission, acting through the Office of Consumer Protection and the County Attorney, enforce hearing panel decisions. County staff reports that parties usually comply with CCOC decisions. If any party does not comply, the County issues a class A civil citation. They will take a party to court if needed.

6) Does the CCOC always side with the property owner in decisions coming out of hearings?

According to the CCOC staff, the commission hearing panels do not always side with the property owner. Both "sides" are represented on hearing panels. Each panel must include a commissioner from the resident category, a commissioner from the professional category and a panel chair. The hearing panel

decisions have all been unanimous for the past four years.

7) What is the turnaround time for cases that go to the CCOC?

Approximate times required for steps in the dispute resolution process are included in Table 3. According to staff, the time to complete the process can range from 3 to 12 months. The length of time varies depending on the complaint and the pace of activity by the parties in the dispute. For example, staff report that the parties in a hearing frequently request more time to prepare for the hearing than the CCOC needs to schedule the hearing.

8) How effective is the dispute resolution process and how satisfied have parties been with the CCOC's assistance?

Approximately 60% of the disputes filed with the CCOC are resolved prior to mediation or through a mediation. If not resolved at mediation, the complaint is brought to a CCOC hearing. The hearing panel comes to a decision on every complaint before them.

The CCOC has not conducted satisfaction surveys of all users of the services. The Conflict Resolution Center of Montgomery County (CRCMC) does survey CCOC clients who participate in a mediation. CRCMC's latest compilation of survey results indicated that 57% of participants "strongly agree" and 17% "agree" that they are satisfied with the mediation results. The survey results also show that 60% of respondents "strongly agree" and 23% "agree" that they are satisfied with the mediation process.

9) What about residents who do not live in common ownership communities or residents in common ownership communities who have a dispute with a bordering neighbor who does not live in a common ownership community?

The CCOC's dispute resolution services apply only to disputes between common ownership community governing bodies and community residents. The CCOC "was established to promote an equitable balance between the powers of community governing bodies, owners and residents". It does not address disputes between neighbors. The City's Mediation Program is available for those disputes.

10) What will Montgomery County do with the revenue from Rockville common ownership community registration fees?

Fee revenue will fund CCOC staff and operations, including responses to requests for information, review and processing of complaints, conducting hearings, and providing education. The majority of the CCOC's spending is on personnel to support the program.

11) How could the City "beef up" the Rockville Community Mediation Program to serve a function similar to the CCOC?

Rockville's Mediation Program operates very similar to the mediation portion of the CCOC dispute resolution process. However, Rockville does not have a representative body in place to hear cases when parties refuse mediation or when mediation does not resolve the dispute. Under the County's program, the commission offers another level of dispute resolution service by forwarding disputes not resolved by mediation to a hearing panel.

To provide that level of service, the City would need to:

- establish a volunteer body to hear dispute cases,
- amend the City Code to give the body the authority to provide the types of services available at the CCOC,
- devise staff policies and procedures for implementing a hearing function,
- dedicate staff time to support the function, and

- train staff to operate the expanded function.

The Mayor and Council would need to appoint a group of residents who, like the CCOC, represent common ownership community boards, common ownership community residents, and individuals in professions associated with common ownership communities. Language would need to be added to the City Code to give the body the types of authority found in County Code Chapter 10B. Examples include the authority to convene a panel to hear disputes between parties, to compel the attendance at a hearing of witnesses, to issue summonses, and the authority to award costs to any party. The City Code would also need to establish procedures for conducting hearings.

City staff in the Mediation Program and the City Attorney's Office would need to be dedicated to this new function to provide support to the volunteer body in the same manner that County staff in the Office of Consumer Protection currently provide and may require the creation of additional staff positions. The specific workload would depend on the number of complaints brought to the City but would involve investigating complaints, preparing for hearings, coordinating with complainants, and supporting the volunteer board and hearing panels.

An attorney in the Montgomery County Attorney's Office devotes part of his time to supporting the CCOC. The County Attorney representative attends every CCOC meeting, attends some CCOC hearings, reads cases submitted for a hearing to provide an opinion on whether the case falls within the CCOC's jurisdiction, reviews draft decisions prepared by the hearing panels, provides legal advice, and assesses whether the County should get involved when a hearing panel decision is appealed to the Circuit Court. If the county decides to intervene, the attorney represents the County in the appeal.

Staff training and establishment of policies and procedures for managing the new function would be required. The commission staff provides technical assistance and information to association boards and residents on topics related with leading and residing in a common ownership community (e.g., conducting elections, adopting budgets, and appropriately enforcing association bylaws). Existing City staff does not have that skill set and would need to acquire knowledge and experience to provide advice and technical assistance on HOA related topics.

The Mayor and Council would need to consider establishing a registration system and annual fee like Montgomery County's in order to support the cost of the new service.

12) What is the benefit of forcing an additional layer of bureaucracy and unnecessary level of time intensive review on common ownership communities?

In all disputes, the resident and association board of directors is first responsible for resolution through the processes outlined in association bylaws. The CCOC only comes into play when either or both parties in a dispute request their assistance. The CCOC provides an opportunity for boards of directors and residents who are not satisfied with a resolution at the community level and would like an alternative to going to court. Any association board or resident can go directly to court at any time with a dispute and not use the services of the CCOC. While progressing through the CCOC dispute resolution process takes time, any dispute taken to court also takes time to resolve.

Mayor and Council History

Following an inquiry from two Rockville residents in 2008, the Mayor and Council requested additional information about the CCOC and received a briefing on January 12, 2009. Survey results were presented to the Mayor and Council on July 13 and October 12, 2009. The Mayor and Council introduced the ordinance to amend Section 1-8 of the City Code on October 12, 2009 and held a public hearing on November 23, 2009.

Public Notification and Engagement

Staff has corresponded with each HOA and condominium association via e-mail and at association meetings with updates about the Mayor and Council's consideration of participating in the CCOC. Residents were invited, through a Rockville Reports article and through their HOAs, to complete an on-line survey. Residents were also invited to comment at the public hearing. The public hearing was advertised in the Gazette and a Rockville Reports article, through announcements at association meetings, and by e-mail to our list of HOA board members/managers and our list of all Rockville's neighborhood leaders. Ten individuals spoke at the public hearing. Thirty one individuals commented by email or letter.

Fiscal Impact

There is no fiscal impact for the City government associated with amending City Code Chapter 1, Sec. 1-8 to adopt County Code Chapter 10B. If the Mayor and Council amends the City Code, all common ownership communities will be required to register with the County's Commission on Common Ownership Communities and to pay an annual fee to the County of \$3.00 per unit. The fee is set at \$3.00 for FY10 but could change in future fiscal years.

Next Steps

Upon direction by the Mayor and Council, staff will bring back the ordinance in Attachment D for adoption on January 25, 2010. If adopted, City staff will provide contact information for Rockville's HOA and condo associations to the CCOC. The CCOC will communicate with each association with instructions to register with the County. City staff would maintain communication with the CCOC and will be available to Rockville associations to answer questions.

Attachments



ATTACH A - Co. Code Chapter 10B.pdf



ATTACH B - Sample Comm Decisions.pdf



ATTACH C - Common Ownership Communities in Rockville.pdf



ATTACH D Ordinance to Amend Sec 1-8.pdf



ATTACH E Summary of comments.pdf

City Manager: Scott Ullery, City Manager
Approval Date: 01/05/2010

CCOC CASE SUMMARY

ATTACH C

#21-08, Salzman v. The Whitehall (January 16, 2009) (Panel: Shontz, Dubin, Vergagni)

The new owner of a townhome condominium refused to pay a \$300 "move-in fee" on the grounds that such a fee only applied to people moving into one of the units of the high-rise building that was part of the same association. He presented his complaint to the president of the condominium, and was informed two weeks thereafter that the board had considered and rejected his complaint and that therefore the board was revoking his privileges (permanent parking sticker, automated key fob, access to storage bin) until he paid.

The disputed move-in rule said that "a one-time move-in fee will be charged for any move-in whether by an owner or renter....All moving must be through the freight elevators and freight entrances. Movers must take care to avoid damage to elevators, walls, floors, etc....Moving vans are only permitted at the loading platform in the rear of the West Building, at the freight entrance at the rear of the North Building and at the parking lot behind the townhouses." The condominium applied this rule to all new residents since it was originally adopted. The rule was modified in 2004 to increase the fee.

The Hearing Panel held that the rule applied to residents moving into townhouses and that the owner must pay the \$300 fee. However, they also found that the condominium violated Section 11-113 of the Maryland Condominium Act. That law states that a condominium association "may not impose a fine, suspend voting, or infringe upon any other rights of a unit owner or other occupant for violations of rules" until the association has followed specific procedures. In this case, the condominium immediately denied certain privileges to the new owner without following any of the mandatory procedures. Therefore, the Panel denied the condominium's request for attorney's fees.

The Panel ordered the owner to pay the \$300 move-in fee within 30 days. The Panel ordered the condominium to restore all the owner's privileges immediately, to review its rule violation procedures and to ensure that they comply with the Condominium Act, and to provide a copy of its decision to all its members.

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CCOC CASE SUMMARY

ATTACH C

Lee v. University Towers Condominium, #52-08 (April 8, 2009) (Panel: Fleischer, Gelfound, Kali)

The board of directors of the University Towers Condominium (UTC) voted to adopt a special assessment of \$1,933,000 to pay for lining the copper water pipes in its two high-rise buildings with epoxy in order to solve its chronic problems with pinhole leaks in the pipes. Lee, a unit owner, filed a complaint claiming that under UTC's own bylaws, any "additions, alterations or improvements in excess of \$25,000" had to be approved by a majority vote of the members.

The facts at the hearing were not in dispute. For several years, UTC had suffered from pinhole leaks due to corrosion in its copper water-supply pipes. The cost of replacing the pipes was estimated at \$6-9 million dollars, and the board opted for the cheaper alternative of coating the interior of the existing system with epoxy. This plan also called for the installation of new cut-off valves in each unit so that plumbing repairs inside each unit could be made without shutting off water to the entire area of the building.

The panel upheld the board's actions. The panel first noted that under Article III of the UTC bylaws, the board of directors had the power to adopt "repairs, additions, replacements and improvements or alterations" of the common elements. However, Article V stated that "additions, alterations or improvements" in excess of \$25,000 required the majority vote of the membership. The panel found no Maryland appellate cases on this issue, but said that the common definitions of the words clearly distinguished "repairs" from "improvements": to "repair" was to "restore to a sound or healthy state" whereas to "improve" was to add something new "that enhances value." The purpose of the repairs here was not to add a new plumbing system where none had existed but "to keep up the domestic water supply and restore it to a sound state." Although the overall contract did call for some additions in the form of new valves and access panels, "these were minor, incidental changes made either to enable [the contractor] to do its work, or as required by Code. More than ninety-nine percent of the original plumbing system remains and the overall appearance and functionality of the system is substantially the same." Because the work was not an "improvement", Article V of the bylaws did not apply and the board did not need the approval of the membership for the work or the increased assessment. The panel dismissed the complaint.

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CCOC CASE SUMMARY

#15-08, Cheryl Prentice v. Sierra Landing Condominium (February 6, 2009) (Panel: McCabe, Alkon, Kali)

The condominium unit owner complained that the condominium had failed to halt the repeated flooding of her below-grade unit and asked for damages and repairs. The condominium claimed that it had undertaken and completed major repairs at a cost of over \$1 million and therefore had properly responded; it also claimed that its Bylaws contained a complete disclaimer of all damages caused by water.

The hearing panel found that the owner's complaints of flooding dated back to 1992, and that she experienced flooding from under the slab and from the ground-floor window wells at least through 2006. In 2007 the condominium performed extensive repairs. In spite of these repairs, on at least 3 occasions in 2008 the living room window well overflowed into the unit, damaging carpets and flooring and causing an infestation of mold. As of the date of the hearing, the mold persisted. The cost of replacing flooring and carpeting was \$9577. The unit owner brought her problems to the attention of the board in 2007. In addition, the condo had been sued by the unit owner's neighbor in 2006 for the same problem and settled with that person. The window wells were common elements under the rules. The condominium could not explain why the living room window well still overflowed and therefore it has not corrected that problem.

The hearing panel found that the condominium had breached its fiduciary duty to maintain the common elements because it was on notice of the problems, had an opportunity to fix them, and failed to fix them properly. "If this duty is breached and as a proximate cause of that breach a unit owner suffers property damage, the Condominium should be held responsible," said the panel.

The panel then held that the disclaimer of liability for water damage did not apply to water damage caused by the condominium's own negligence. It said the clause conflicted with the duties imposed by the Maryland Condominium Act and by the condominium's own governing documents to maintain the common areas. Furthermore, it conflicted with the condominium's documents that required the condominium to have insurance to cover its own liability, and with a rule that stated that if any unit was damaged by a leak from the common elements the condominium would fix the damages.

The panel ordered the condominium to pay the unit owner \$9577 in damages under Section 10B-13(e) of the County Code, and within 30 days both determine the cause of the continued flooding and remove the mold infestation from the unit.

**Common Ownership Communities in Rockville
Oct-09**

Community Name	Number of Units	Type of Units	FY 10 County Registration Fee (\$3.00/unit)
Americana Centre Condo Association	425	Condo and TH	\$ 1,275
Baileys Commons Condos II/III	79	Condo	\$ 237
College Square Condo Association	146	Condo	\$ 438
Fallsgrove Condo Residences I	49	Condo	\$ 147
Fallsgrove Condo Residences II	48	Condo	\$ 144
Fallsgrove Condo Residences III and IV	22	Condo	\$ 66
Heritage Park Coop	64	Condo	\$ 192
Irvington Center Condos	28	Condo	\$ 84
King Farm Condos II	54	Condo	\$ 162
King Farm Condos III/IV	78	Condo	\$ 234
King Farm Condos V	54	Condo	\$ 162
King Farm Two Condos Phase I	30	Condo	\$ 90
King Farm Two Condos Phase III	30	Condo	\$ 90
King Farm Two Condos Phase V	28	Condo	\$ 84
King Farm Village Center Condos I/II/III	153	Condo	\$ 459
Palladian	150	Condo	\$ 450
Plymouth Woods Condo Association	272	Condo and TH	\$ 816
Royalton at King Farm	275	Condo	\$ 825
The Fitz at Rockville Town Center	222	Condo	\$ 666
Woodmont Spring Condo Inc.	65	Condo	\$ 195
Victoria Condo Association	143	Condo	\$ 429
Village Green Condo Association	45	Condo	\$ 135
Woodley Gardens Coop	56	Condo and TH	\$ 168
Condo and Condo/TH Subtotal	2,516		\$ 7,548
Ashliegh Woods HOA	31	TH	\$ 93
Cambridge Heights HOA	38	TH	\$ 114
Cambridge Walk I HOA	15	TH	\$ 45
Cambridge Walk II HOA	17	TH	\$ 51
Chadsberry HOA	47	TH	\$ 141
Charles Walk Community Association	20	TH	\$ 60
Courthouse Walk HOA	62	TH	\$ 186
Great Pine Community Association	19	TH	\$ 57
Griffith Oaks HOA	20	TH	\$ 60
Jefferson Square HOA	60	TH	\$ 180
Redgate Farms Community Association	45	TH	\$ 135
Regents Square Condo Association	252	TH	\$ 756
Rockcrest Courts HOA	33	TH	\$ 99
Twinbrook Forest Condo Association	33	TH	\$ 99
Woodmont Overlook HOA	98	TH	\$ 294
Wootton Oaks HOA	20	TH	\$ 60
Waddington Park HOA	40	TH	\$ 120
Villages at Tower Oaks HOA	136	TH	\$ 408
Townhome Subtotal	986		\$ 2,958

Community Name	Number of Units	Type of Units	FY 10 County Registration Fee (\$3.00/unit)
Carter Hill HOA	99	TH and SF	\$ 297
Fallsgrove Property Owners Association	556	TH and SF	\$ 1,668
Flint Ledge Estates Community Association	64	TH and SF	\$ 192
Legacy at Lincoln Park HOA	83	TH and SF	\$ 249
King Farm Citizens Assembly	1,287	TH and SF	\$ 3,861
New Mark Commons HOA	384	TH and SF	\$ 1,152
Rockshire Association Inc.	753	TH and SF	\$ 2,259
Rose Hill Falls Community Association	219	TH and SF	\$ 657
Townhome/Single Family Subtotal	3,445		\$ 10,335
Fallsbend HOA	55	SF	\$ 165
Fallsmead Homes Corporation	291	SF	\$ 873
Falls Ridge HOA	177	SF	\$ 531
Homes at Fallsgrove	186	SF	\$ 558
Jefferson Place HOA	17	SF	\$ 51
Rose Hill HOA	126	SF	\$ 378
Saddlebrook	74	SF	\$ 222
Thirty Oaks HOA	13	SF	\$ 39
Single Family Subtotal	939		\$ 2,817
Total Units	7,886		\$ 23,658

TH - Townhome
SF - Single Family

**Ordinance to Amend Section 1-8 of the Rockville City Code entitled
“Application of County Law” so as to allow Chapter 10B entitled
“Common Ownership Communities” of the Montgomery County Code
to apply in the City**

Summary of Comments

November 23, 2009 Public Hearing		
Name	Position	Summary of Comments
Gerry Cashin, President, Plymouth Woods Condominium Inc.	Supports	City Mediation Program is helpful but doesn't have teeth. CCOC avoids expense of going to court. CCOC benefits both associations and residents.
Margaret Chao, President, New Mark Commons HOA	Opposes	CCOC does not hear cases re: collection of annual HOA fees. County registration fee has increased and may continue to increase. Don't adopt something residents don't need.
Roxy Chase		Bylaws are not written down. Monthly condo fees increased too much. Can't always make it to condo assoc meetings when decisions are made.
Tom Curtis	Opposes	Described situation in 1991 and his experience as chair of RCOCA. Under RCOCA there was not a need for binding arbitration because issues of dispute were minor. Indicated that King Farm is not supportive.
Martin Green, Trustee, King Farm Citizen's Assembly	Undecided	King Farm Citizens Assembly has not developed a position yet.
Evan Johnson, Montgomery County Dept of Consumer Protection		County Executive is supportive of the legislation. Briefed Mayor and Council on program and answered questions.
Alice Liu	Undecided	Asked a series of questions that are addressed in the agenda sheet.
Joe McClane	Supports	Will help his association's governance. City's Mediation Program is nice but we need more teeth. Suggests the City subsidize the registration fee.
Steven Willard	Supports	Described a situation that he feels his association board of directors inappropriately handled. Power that boards wield is a problem.

Richard Zeidman	Supports	Good for associations and residents. No impact on HOA because fee is ultimately paid by residents at 25 cents/month. Saves costs of litigation. Provides residents another option.
Written Comments		
Name	Position	Summary of Comment
Lauren Boice, President, Rose Hill HOA	Opposes	Appropriate procedures are already available in HOA governing documents. Unnecessary level of review permits disgruntled homeowner to delay resolving issues w/ their property, exposes the HOA to liability, lowers property values. Would require increasing homeowner monthly fees. Undermines the role of the HOA.
Patricia Brown	Supports	Homeowners feel powerless in any situation between them and a Board.
Gerry Cashin, President, Plymouth Woods Condominium Inc.	Supports	Likes that CCOC requires complainants to try to settle disputes w/ their board first. Their Board has successfully resolved disputes before. Not requiring an attorney in CCOC processes saves both parties money.
Rita Cea	Supports	Only option homeowner has now is mediation and the other party may choose to not participate. Outcome is not binding.
Margaret Chao, President, New Mark Commons HOA	Opposes	CCOC does not hear cases re: collection of annual HOA fees. County registration fee has increased and may continue to increase. Don't adopt something residents don't need. The CCOC is not used much by County residents.
Ron Chiariello	Supports	CCOC offers venue to resolve conflicts in a less costly, less time consuming and possibly less hostile way.
Jeff Cohen, President, Fallsgrrove HOA	Opposes	Their HOA dispute resolution procedures are already successful. Will hinder HOA's ability to enforce its governing docs in a timely and efficient manner. Time required for CCOC review process means eyesores and safety issues remain in the community longer. Fee to have attorney at CCOC proceedings is not a good use of HOA funds. To pay the County fee, likely to increase assessments to homeowners.

Tom Curtis	Opposes	Found in 1991 that we did not have problems between HOAs and homeowners that couldn't be resolved through mediation. Most disputes revolve around condo fees, which CCOC doesn't deal with. There's a hidden cost since both parties in dispute will probably hire lawyers. The staff survey was biased in favor of adoption.
Ellen and Michael Glazer	Supports	Opportunity for rational people to hear rules and regulations made by power hungry idiots in charge of condo boards.
John Hansman	Opposes	Residents don't need it and it's another fee.
Nancy Hart, Board Member, Villages at Tower Oaks HOA	Opposes	Prohibits HOAs from enforcing rules in a timely and efficient manner, impacting home values. HOA bylaws, City Mediation and court already provide an appeal process. Could cause unruly residents to upset HOA processes. Time to complete the CCOC process means eyesores and unsafe conditions remain. Unnecessary fee on HOA residents. No option to opt out.
Evan Johnson		County staff submitted answers for the record to questions raised by the Mayor and Council and residents.
Barry Klein	Opposes	Based on experience as a City volunteer mediator, suggests using the Rockville Mediation Program to resolve disputes. If that doesn't work, go to court.
Joe McClane	Supports	Common ownership communities are becoming more common. The CCOC expertise is invaluable. Cost minimal compared to benefits.
Judge Michel Levant	Supports	It's a win-win proposal. Benefits many citizens at no cost to the City.
Beverly Miller	Supports	
Charlie Miller	Supports	HOA is operated by a clique of individuals and if a resident has an issue with the board resident is alienated by the board.
Brigitta Mullican	Opposes	Will not solve association problems and costs money that could be used for more pressing issues.
Kathy Neale	Opposes	
Nancy Nelson	Opposes	Unnecessary intrusion into private matters by City and County.

Steven Nesbit, President, Falls Grove Property Owners Association, Inc.	Opposes	May hinder association's ability to enforce governing documents in timely and efficient manner. Time to move through CCOC means eyesores and unsafe conditions remain. Duplicates existing community processes that are already sufficient. Significant cost to association and homeowners, including legal fees. No option to opt out.
Jon Oberg	Supports	CCOC is important for: training HOA boards and personnel; dispute resolution; better planning and budgeting at the HOA level.
Orange6363@aol.com	Supports	
Torsdon Poon	Opposes	Represents an extra tax on HOA residents but not other residents. Creates undue exposure and burden on his HOA. Redundant of procedures in the HOA documents.
Judith and Stan Rosenthal	Supports	Creates an even playing field when boards see their "job" as choosing favorites to bestow approvals of requests.
Roald Schrack	Supports	Important for HOAs to feel the program is valuable but the benefit to homeowners is most attractive. The HOA is all powerful. With the CCOC, the homeowner has a fair chance of prevailing.
Richard and Kim Smith	Opposes	HOA functions well. Imposes a tax on HOA governed communities and creates an unacceptable increase in HOA dues. Potential for community to be exposed to liability.
Christopher Swann, President, King Farm Citizens Assembly	Opposes	There's no option for an HOA to 'opt out.' Which disputes are covered by CCOC is confusing. CCOC track record needs to be reviewed. Mandatory fee on HOAs could lead to more disputes. Don't make resolution procedures more complicated.
Jeffrey Szekely	Supports	City has grown substantially in the area of condos/HOAs. Cost is small. Provides due process. Will help relationship between boards and residents.

Jeff Weber, President, Homes at Fallsgrove Owners Association	Opposes	Extra process will prohibit timely enforcement of HOA rules and will impact home values. Appeals processes in HOA documents, City Mediation Program and court already exist to address disputes. Allows unruly residents to upset the HOA processes. Additional cost to HOA residents. Time required for CCOC process means eyesores and safety issues remain. No option to opt out.
Ricke Ziedman	Supports	It's a win-win proposal.